

225 CMR 14.00 - RENEWABLE ENERGY PORTFOLIO STANDARD

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14.01: Authority.

225 CMR 14.00 is promulgated pursuant to M.G.L. c.25A, § 11F.

14.02: Effective Date.

225 CMR 14.00 shall be effective on the date of promulgation.

14.03: Definitions.

Business Day. A business day shall mean Monday through Friday, exclusive of state and federal legal holidays.

Commercial Operation Date. The date that a Generation Unit first produces electricity for sale or for behind the meter use.

Compliance Period. A calendar year beginning January 1 and ending December 31 of the same year.

Division. The Massachusetts Division of Energy Resources.

Eligible Biomass Fuel. Fuel sources including wood waste as defined by the Department of Environmental Protection (310 CMR 16.02), agricultural waste as defined by the Department of Environmental Protection (310 CMR 16.02), food waste, energy crops, biodiesel, organic refuse-derived fuel that is collected and managed separately from municipal solid waste.

Eligible Renewable Fuel. An Eligible Biomass Fuel, landfill or digester methane gas, and hydrogen created through the use of New Renewable Generation.

End-Use Customer. A person or entity in the Commonwealth that purchases electricity at retail from a Retail Electricity Supplier.

Generation Attribute. A non-price characteristic of a Generation Unit created when that unit operates to produce electricity, including, but not limited to, fuel type, emissions, vintage, RPS eligibility, and labor status.

Generation Unit. A facility that converts a fuel or energy resource into electricity.

Historical Generation. The average annual electrical production, stated in megawatt-hours, from a Generation Unit for the three calendar years 1995 - 1997, or for the first 36 months after the Commercial Operation Date if that date is after December 31, 1994.

Naturally Flowing Water and Hydroelectric Unit. A Generation Unit that uses flowing water as the primary energy source, with or without a dam structure or other means of regulating water flow, and that is not located at a facility that uses mechanical or electrical energy to pump water into a storage facility (i.e. "pumped-storage facility").

New Renewable Generation. Electricity produced by a New Renewable Generation Unit.

New Renewable Generation Unit. A Generation Unit that has received a Statement of Qualification from the Division.

Off-Grid Generation. The electricity produced by a Generation Unit that is not connected to a utility transmission or distribution system.

Operator. Any person or entity who has charge or control of a Generation Unit subject to these regulations, including without limitation, an agent, lessee of the owner or an independent contractor.

Owner. Any person or entity who alone or in conjunction with others has legal ownership, a leasehold interest, or effective control over the real property or property interest upon which a Generation Unit is located, or the airspace above said real property. For the purposes of this definition, "Owner" does not mean persons or entities holding legal title or security interest solely for the purpose of providing financing.

Renewable Fuel, Energy Resource or Technology. Any of the fuels, energy resources or technologies listed in 225 CMR 14.06(1)(b) plus Naturally Flowing Water and Hydroelectric and waste-to-energy which is a component of conventional municipal solid waste technology in commercial use.

Retail Electricity Product. An electricity offering that is distinguished by its Generation Attributes and that is offered for sale by a Retail Electricity Supplier to End-Use Customers.

Retail Electricity Supplier (RES). A person or entity that sells electricity to End-Use Customers in the Commonwealth including but not limited to electric utility distribution companies supplying standard offer and default service to End-Use Customers. Municipal Lighting Plants (MLP) shall not be considered to be a RES unless any class of customer within the MLP distribution area is offered retail choice of electricity supplier.

RPS Attribute. The fuel, energy resource or technology, as defined in 225 CMR 14.06(1)(b), associated with New Renewable Generation.

Vintage Generation Unit. A Generation Unit that has a Commercial Operation Date of December 31, 1997 or earlier.

14.04: Administration.

These regulations shall be administered by the Division.

14.05: Applicability.

These regulations apply to Retail Electricity Suppliers and to the Owners or Operators of New Renewable Generation Units.

14.06: New Renewable Generation Units.

(1) New Renewable Generation Unit Requirements. A New Renewable Generation Unit shall meet the requirements of this subsection.

(a) Statement of Qualification. The Generation Unit shall possess a valid Statement of Qualification from the Division that the unit qualifies as a New Renewable Generation Unit.

(b) Fuels, Energy Resources and Technologies. To qualify as a New Renewable Generation Unit a Generation Unit shall utilize one or more of the fuels, energy resources and/or technologies listed below. No other fuels, energy resources or technologies shall be eligible unless added by the Division pursuant to the provisions of M.G.L., c25A, section 11(F)(b).

- (i) Solar photovoltaic or solar thermal electric energy;
- (ii) Wind energy;
- (iii) Ocean thermal, wave or tidal energy;
- (iv) Fuel cells utilizing an Eligible Renewable Fuel;
- (v) Landfill methane gas, provided that such gas is collected and conveyed directly to the generation facility without use of facilities utilized as common carriers of natural gas;

(vi) Low-emission, advanced biomass power conversion technologies using an Eligible Biomass Fuel. To qualify as a low emission, advanced biomass power conversion technology a Generation Unit must meet both of the following standards:

(1) Low emission – the Generation Unit shall possess a valid air permit from the state or other jurisdiction in which it is located.

(2) Advanced Biomass Power Conversion Technology - the Generation Unit shall use fuel gasification technology or other advanced technology as determined by the Division. Pile burn, stoker combustion or similar technologies shall not constitute an advanced biomass power conversion technology.

(c) Commercial Operation Date. To qualify as a New Renewable Generation Unit the Commercial Operation Date for the Generation Unit shall be after December 31, 1997.

(d) Metering. The electricity output from a New Renewable Generation Unit shall be verifiable through metering technology/equipment meeting generally accepted industry standards as determined by the Division.

(2) Vintage Generation Units. Vintage Generation Units may qualify as New Renewable Generation Units if they meet any one or more of the standards listed in (a) and (b) below:

(a) Capacity Expansions.

(i) Energy Basis. A Vintage Generation Unit that meets the requirements of 225 CMR 14.06(1), excepting 14.06(1)(c), shall qualify as a New Renewable Generation Unit for that portion of its electricity generation, stated in megawatt-hours, that is greater than the Historical Generation of said Vintage Generation Unit during a Compliance Period.

(ii) Capacity Basis. A Vintage Generation Unit that meets the requirements of 225 CMR 14.06(1), excepting 14.06(1)(c), shall qualify as a New Renewable Generation Unit for that portion of its rated electricity generating capacity, stated in megawatts that is greater than the rated generating capacity of said Vintage Generation Unit on December 31, 1997.

(b) Relocation. A Generation Unit shall not qualify as a New Renewable Generation Unit solely by virtue of being moved to a different

location from that which it occupied, while in Commercial Operation, prior to December 31, 1997.

(3) Co-Firing With Ineligible Fuels. A Generation Unit that uses an ineligible fuel in conjunction with an Eligible Renewable Fuel may qualify as a New Renewable Generation Unit provided that the Generation Unit meets all other eligibility requirements and subject to the following:

(a) If using an Eligible Biomass Fuel, the entire Generation Unit must meet the requirements of a low emission advanced biomass power conversion technology set forth in section 14.06(1)(b)(vi); and

(b) The ratio of New Renewable Generation to total electricity generation over any time period shall not exceed the ratio of the total heat content of Eligible Renewable Fuel consumed during the same time period to the total heat content of all fuel consumed over the same time period.

The provisions of this section shall not apply to the incidental use of ineligible fuels for the purpose of cold starting a Generation Unit that otherwise exclusively uses an Eligible Renewable Fuel.

(4) Small Generation Units. A Generation Unit whose output is not reported to or monitored by the New England Power Pool may qualify as a New Renewable Generation Unit provided the Generation Unit meets all other eligibility requirements, subject to the following:

(a) The Generation Unit Owner or Operator must provide assurances satisfactory to the Division that any New Renewable Generation Attributes allocated to a RES shall not also be allocated to any other entity in any other jurisdiction.

(b) The Generation Unit must be located in the Commonwealth if the Generation Unit is wired to the electrical system on the retail customer's side of a retail electricity meter.

(5) Imports. A Generation Unit that is located outside the control area of the New England Power Pool may qualify as a New Renewable Generation Unit subject to the following:

(a) For RPS Attributes to be used for RPS Compliance, the Generation Unit Owner or Operator must provide assurances satisfactory to the Division that said RPS Attributes were not also allocated to any other entity in any jurisdiction to be used for any purpose including, but not limited to, RPS compliance, renewable energy marketing and sales, and green marketing.

(b) For RPS Attributes to be used for RPS Compliance, the Generation Unit Owner or Operator must provide documentation satisfactory to the

Division of transmission of the New Renewable Generation associated with the RPS Attributes from the New Renewable Generation Unit to the NEPOOL Control Area by means of an External Transaction Unit Contract for Energy 1 or Energy 2, as defined in NEPOOL Market Rules and Procedures Section 12.2.1(a).

14.07: New Renewable Generation Unit Qualification.

(1) Application for Statement of Qualification as a New Renewable Generation Unit. The owner or operator of a Generation Unit seeking approval to participate in the Massachusetts RPS program must submit an application on form(s) provided by the Division, and must receive a "Statement of Qualification" as a New Renewable Generation Unit from the Division.

(2) Review.

(a) The Division will act on applications submitted pursuant to 225 CMR 14.07(1) within 90 days from the date the application is received at the Division Offices.

(b) If the Generation Unit (Unit) meets the requirements for New Renewable Generation Units the Division will provide the Owner or Operator of the Unit with a Statement of Qualification.

(c) The Division shall publish the name, facility location, fuel or energy resource, and technology of each Generation Unit that receives a Statement of Qualification. The notice shall be published on the Division web-site and any other media deemed appropriate by the Division.

(d) If the Unit does not meet the requirements for New Renewable Generation Units the Division shall provide written notice to the Owner or Operator that the Generation Unit does not qualify as a New Renewable Generation Unit, including a statement of the reasons for the Division's decision.

(e) The Division shall provide an opportunity for public review and comment of any application for a Statement of Qualification for a Generation Unit that: (1) uses an Eligible Biomass Fuel in conjunction with any technology other than gasification; (2) co-fires an Eligible Renewable Fuel in a Generation Unit in conjunction with ineligible fuels; or (3) represents the conversion of a Generation Unit that originally utilized ineligible fuels.

The Division may provide an opportunity for public comment on any other application for a Statement of Qualification.

(3) Notification Requirements for Change in Eligibility Status. The Owner or Operator of a New Renewable Generation Unit shall notify the Division of any

changes in the configuration, technology, operation, fuel sources, energy resources, or other characteristics of the Generation Unit that would affect the eligibility of the unit for the Massachusetts RPS. The Owner or Operator shall submit the notification to DOER no later than 30 days after such changes are implemented. The notice shall state the date the changes were made to the New Renewable Generation Unit.

(4) Annual Recertification.

(a) Recertification Requirement. New Renewable Generation Units that have registered with the Division shall submit an annual recertification to the Division that the information in the application on file with the Division is accurate, or describing any changes to the Generation Unit that were not reported pursuant to 225 CMR 14.07(3). The New Renewable Generation Unit Owner or Operator shall submit the recertification on the appropriate form obtained from the Division in accordance with the schedule set forth in the Division's Guidelines.

(b) Failure to File. If a New Renewable Generation Unit Owner or Operator fails to comply with 225 CMR 14.07(3) or 14.07(4)(a), the Division may revoke the Statement of Qualification of the New Renewable Generation Unit.

(5) Advisory Ruling. A RES, Generation Unit Owner or Operator, or renewable energy developer may request an advisory ruling from the Division to determine whether a prospective Generation Unit would qualify as a New Renewable Generation Unit. The Advisory Ruling request shall be submitted on appropriate forms obtained from the Division.

14.08: Renewable Energy Portfolio Standard (RPS).

(1) Mandatory RPS Percentage. Each RES shall include minimum percentages of RPS Attributes in each Retail Electricity Product that is sold to Massachusetts End Use Customers according to the schedule in Table 14.08.

TABLE 14.08 – RPS SCHEDULE

Year / Compliance Period	Mandatory RPS Percentage
2003	1.0%
2004	1.5%
2005	2.0%
2006	2.5%
2007	3.0%
2008	3.5%
2009	4.0%

(a) Discretionary RPS Increases. After 2009, the Mandatory RPS Percentage shall increase by one percent per Compliance Period until the Division suspends the discretionary RPS increases.

(b) Suspension of Discretionary RPS Increases. No later than December 31, 2007, and at least every five years thereafter, the Division shall review the conditions prevailing in the market and make a determination as to whether further discretionary RPS increases should be suspended. The Discretionary RPS Increases can be resumed by the Division post suspension.

(2) RPS Compliance.

(a) Normal Compliance. Each RES shall be deemed to be in compliance with M.G.L. c. 25A, § 11F and 225 C.M.R. 14.00 if the information provided in the Compliance Filing submitted pursuant to 225 CMR 14.09(2) demonstrates compliance with the RPS requirements stated in subsection 225 CMR 14.08(1). Generation Attributes marketed by a RES for any purpose other than RPS compliance, including but not limited to renewable energy marketing and sales or green power, shall not be eligible as RPS Attributes for the purpose of RPS compliance.

(b) Early Compliance. RPS Attributes produced prior to the initial RPS Compliance Period (January 1, 2003 – December 31, 2003) shall be eligible to be used by a RES for the initial RPS Compliance Period subject to the following conditions:

- (i) The RPS Attributes are the result of New Renewable Generation that occurred during the calendar year 2002;
- (ii) The RPS Attributes were not used or claimed to substantiate any marketing claim related to the sale of electricity or Generation Attributes in any jurisdiction; and
- (iii) The RPS Attributes are allocated by the RES to End Use Customers within the Commonwealth in the calendar year 2002, as documented by information satisfactory to the Division.

(c) Banked Compliance. A Retail Electricity Supplier possessing surplus RPS Attributes may apply them to a subsequent Compliance Period as Banked Compliance, subject to the following conditions:

- (i) The RES must be in compliance with the RPS for all previous Compliance Periods.
- (ii) The RES must document, to the satisfaction of the Division, that the RPS Attributes applied to Banked Compliance were not used, or claimed, to substantiate any marketing claim

related to the sale of electricity or Generation Attributes in any jurisdiction.

(iii) The quantity of RPS Attributes allocated to Banked Compliance by a RES in one Compliance Period shall not exceed thirty percent of the RES's RPS compliance obligation for that Compliance Period.

(iv) Banked Compliance shall expire after two Compliance Periods.

(v) Banked Compliance shall not be transferable either directly or indirectly among Retail Electricity Suppliers.

(d) Alternative Compliance - A RES may discharge its RPS compliance requirement (in whole or in part) for any Compliance Period by making an Alternative Compliance Payment (ACP) to the Massachusetts Technology Park Corporation (MTPC), created by G.L. c. 40J, subject to the following restrictions:

(i) The RES shall include in its RPS Compliance Filing with the Division a copy of the MTPC receipt for such ACP.

(ii) For Compliance Period 2003, the ACP rate shall be \$50 dollars per megawatt-hour. By January 31 of each Compliance Year, beginning with Compliance Period 2004, DOER will publish the ACP rate which will be equal to the ACP rate of the previous year adjusted up or down according to the Consumer Price Index.

(iii) The ACP shall be divided by ACP rate to determine the number of MWH that can be applied to the RES's RPS Compliance requirement.

14.09: Reporting Requirements.

(1) Early Compliance Filing. A RES claiming Early Compliance under 225 CMR 14.09(3) shall submit an Early Compliance Filing to the Division in accordance with Division Guidelines. Retail Electricity Suppliers shall submit Early Compliance Filings no later than July 1, 2003 using the appropriate form obtained from the Division.

(2) Compliance Filing. Each RES shall document compliance with the RPS by submitting a Compliance Filing for each RPS Compliance Period in accordance with Division Guidelines. Retail Electricity Suppliers shall submit an Annual Compliance Filing no later than July 1 of the subsequent Compliance Period using the appropriate form obtained from the Division.

(3) Annual Renewable Energy Resource Report.

(a) Publication of Generation Units. The Division shall publish the name, facility location, fuel or energy resource, and technology of each Generation Unit that uses a Renewable Fuel, Energy Resource or Technology as defined in 225 CMR 14.03. The notice shall be published on the Division web-site and any other media deemed appropriate by the Division.

(b) Report. Each RES shall submit an Annual Renewable Energy Resource Report to the Division for each RPS Compliance Period. The Report shall document the amount of Generation Attributes that represent a Renewable Fuel, Energy Resource or Technology, regardless of eligibility for the RPS, that have been allocated to sales to End-Use Customers by the RES. Each RES shall submit the Annual Renewable Energy Resource Report to the Division no later than July 1 of the subsequent Compliance Period using the appropriate form obtained from the Division.

14.10: Inspection.

(1) Document Inspection. The Division may audit the accuracy of all information submitted pursuant to these regulations. The Division may request and obtain from any Owner or Operator of New Renewable Generation Units and RES, information that the Division determines is necessary to monitor compliance with, and enforcement of M.G.L. c. 25A, § 11F and its implementing regulations, 225 CMR 14.00.

(2) Audit and Site Inspection. Upon notice to, and consent of a RES or New Renewable Generation Unit Owner or Operator, the Division may conduct audits of records and/or site visits of New Renewable Generation Unit and RES facilities, including, but not limited to, all files and documents the Division determines is related to RPS compliance.

14.11: Non-Compliance.

Any RES or Owner or Operator of a New Renewable Generation Unit that does not comply with the requirements of these regulations shall be subject to the following provisions:

(1) Make-up Requirement. Any RES that fails to meet the RPS requirement for a Compliance Period shall make-up the shortfall by purchasing RPS Attributes equal in quantity to the shortfall in the first quarter of the subsequent Compliance Period. RPS Attributes purchased pursuant to this section shall be credited to the Compliance Period for which the RES did not meet the RPS requirement. RPS attributes allocated to any Make-up Requirement shall not be eligible for compliance with the Mandatory RPS Requirement of any succeeding Compliance Period.

- (2) Compliance Plan Requirement. Any RES that fails to achieve the Mandatory RPS Percentage as specified in 225 CMR 14.08 during a Compliance Period shall submit an RPS Compliance Plan to the Division by June 1 of the immediately subsequent Compliance Period. The Compliance Plan shall detail the manner in which the RES plans to meet the RPS requirements. The Compliance Plan shall conform to the format specified in the RPS Guidelines.
- (3) Publication of Notice of Non-Compliance. A violation of the regulatory requirements contained herein may be published on the Division web-site and any other media deemed appropriate by the Division. The notice may remain posted until the Owner or Operator is in compliance.
- (4) Dispute Resolution. If a RES disagrees with a finding by the Division that the RES is not in compliance, it may dispute the Division's determination by submitting the matter to the Dispute Resolution Process described in the RPS Guidelines.
- (5) Suspension or Revocation of License. Following the dispute resolution process referenced in 225 CMR 14.11(4), the Division may refer its findings to the Department of Telecommunications and Energy. A RES found to be in violation of 225 CMR 14.00 may be subject to the Department of Telecommunication and Energy (DTE) Licensure Action(s) under 220 CMR 11.07(4)(c)(1).

14.12: Annual Report.

The Division will produce an annual report that summarizes the information submitted to the Division by Retail Electric Suppliers in the Annual Renewable Energy Resource Reports required under 225 CMR 14.09(3).